

## REMARKS

Applicant noted the Examiner's comments set forth in the Information Disclosure Statement section of the Final Office Action, and the Examiner is informed that the Applicant is still looking for the articles by Vural and Severini, and Applicant will submit those in a Supplemental Information Disclosure Statement to the Examiner as soon as copies of those articles are located.

Also in the Final Office Action mailed May 27, 2009, claims 1-2 were rejected under 35 U.S.C. §103(a) as being unpatentable over Bloukas et al. (Meat Science Vol. 45, No. 2, 133-144 1977) (hereinafter Bloukas) in view of the combination of Domazakis (WO 02/065860) and "Sonoma sausage." Claims 3-4 have also been rejected under 35 U.S.C. §103(a) as being unpatentable over Bloukas, in view of a combination of Domazakis and Sonoma sausage and, and further in view of Gryczka et al (U.S. 4,147,807) (hereinafter Gryczka). For the reasons that follow, Applicant traverses all of these grounds for rejecting the claims of the present application.

### The "Sonoma sausage" Reference

Applicant was not able to identify any sausage product from the lists provided in Sonoma sausages that show similar characteristics to the meat products covered by the present patent application.

As viewed in the relative Sonoma sausages website [www.sonomasausage.com](http://www.sonomasausage.com) (viewed by Applicant on 6/11/2009), there is no indication that the Sonoma sausages are of fermented "dry or semi-dry" type. Instead, it is rather evident that the Sonoma sausages are of a "fresh/raw" type, meaning that they are intended for home cooking (e.g., baking, grilling, etc.), and that therefore they are neither "fermented" (e.g., dry, semi-dry), nor "cooked."

In contrast with the products taught in Sonoma sausage, the dry and semi-dry fermented products covered by the present application are included in a distinctly different product category from those of Sonoma sausage, and they result from special physical, chemical and microbiological processes. For example, one of the major physical changes occurring during sausage fermentation is dehydration, a process found to promote olive oil expulsion. In other words, there is no indication in Sonoma sausages, regarding stable liquid oil incorporation in dry- or semi-dry fermented sausages. The problem of stable liquid fat incorporation is neither encountered nor dealt with in the products taught in Sonoma sausage. Moreover, the Applicant is unable to identify in the Sonoma sausage reference any indication whatsoever of the direct incorporation of a liquid vegetable fat in the Sonoma sausage products.

In conclusion, the Applicant respectfully notes that the Sonoma reference is irrelevant as being nonanalogous to the present invention.

#### The "Gryczka" Reference

Gryczka describes a process for producing fermented meat with excellent flavor and color in which a particular bacteria species, *Micrococcus*, having very poor acid producing characteristics, is used, contrary to the teachings of the prior art. It was also an object of that invention to provide unique bacterial compositions for use in the process. It is particularly an object of the said invention to provide bacterial concentrates that produce fermented meat [cf. D3, page 2, column 2, lines 32-44].

Contrary to Gryczka, the present application is concerned with the stability of liquid olive incorporation in dry- or semi-dry fermented sausages. The use of the types of microorganisms specifically mentioned in the present application (i.e., *Lactobacillus*, *Staphylococcus*, *Micrococcus*, etc.) for the making of fermented sausages is rather well known to a person of

ordinary skill, and the Applicant neither attempts to claim this as an inventive step over that prior art, nor suggests restriction of the use of other bacterial species or strains with similar functionality. Rather, the Applicant teaches the average skilled person that the fermentation of the dry products is basically a biological fermentation due to the growth of **various** microorganisms. [cf. page 1, column 1, paragraph 0011]. The Applicant exemplifies the term “various” by referring to three typical bacterial species (i.e., *Lactobacillus*, *Staphylococcus*, *Micrococcus*).

Moreover, Gryczka does not contain any indication whatsoever of the use of liquid olive oil in the preparation of fermented sausages, not to mention the individual process features of the presently claimed method needed in order to stably incorporate the liquid olive oil into the fermented sausages, (i.e., starting temperature of -4°C, and at temperature of -2°C for the olive oil addition).

Therefore, Gryczka would not lead the average skilled person to the subject matter of claims of the present application.

#### The Bloukas Reference

Please refer to Applicant’s previous communication (the **Amendment After Office Action mailed September 18, 2008**) for a detailed comparison between the present application and Bloukas.

In brief, in Bloukas anyone can read, “[T]he frozen beef and pork meat were cut and pre-weighed amounts of beef and pork meat were chopped for 2-3 sec.” (Bloukas page 135). Therefore, it would indeed be obvious and predictive for a person of ordinary skill to select any temperature in a broad range (+/- 5 degrees °C) around the freezing temperature of -20°C

mentioned in Bloukas. However, the starting temperature of -4°C claimed in the present application is clearly higher than any recommended by Bloukas.

#### The Domazakis (WO 02/065860) Reference

Please refer to our previous communication (the **Amendment After Office Action mailed September 18, 2008**) for a detailed comparison between present application and Domazakis WO 02/065860 (D1).

Domazakis teaches the preparation of cooked emulsion-type olive oil-containing products, which is a distinctly different product category from the fermented dry or semi-dry sausages of the present application. Moreover, the method of preparing cooked emulsion type sausages is substantially different to the method of preparing fermented dry or semi-dry sausages. The physicochemical characteristics of the resulting products are also substantially different (i.e., cooked emulsion-type *versus* fermented dry/semidry).

Moreover, Domazakis selects higher temperatures in its process milestones. Specifically, thin meat of temperature 0°C is mixed with a number of ingredients, such as vegetable proteins, milk proteins and starch, the exception being the water of -2°C. Addition of olive oil occurs at a mixture temperature of 2 °C, and the mixing process stops when the temperature is 4°C. In the present application, the starting temperature is -4°C, and addition of liquid olive oil occurs at a mixture temperature -2°C (i.e., 4 degrees lower compared to Domazakis).

#### The Combination of Bloukas, Domazakis and Gryczka

The combination of Bloukas, Domazakis and Gryczka does not lead one of average skill to the subject matter of the claims of the present application. For example, neither Bloukas nor Gryczka give any guidance to the average skilled person with respect to the successfully stable incorporation of liquid olive oil in fermented sausages. With the exception of Domazakis, none

of the references of record gives any hint whatsoever to the average skilled person with regard to the use of olive oil in the preparation of fermented (dry, semi-dry) sausages. Domazakis, to the contrary, specifically refers to the incorporation of liquid olive oil in fermented sausages as a practice leading to unacceptable quality characteristics, and thus Domazakis teaches directly away from the claims of the present application. Thus, Domazakis discourages rather than encourages the average skilled person to attempt to add liquid olive oil during the preparation of fermented sausages, as claimed in the present application. Moreover, Domazakis specifically teaches the addition of sodium chloride at a later mixing and chopping stage, during the preparation of fermented sausages.

Documents Domazakis and Gryczka are also silent with regard to the use of the starting temperature of  $-4^{\circ}\text{C}$ , of the present application, as well as to the use of the temperature  $-2^{\circ}\text{C}$  for the addition of olive oil, which constitute essential prerequisite steps for the stable incorporation of liquid fatty substances, such as olive oil, in fermented sausages.

As already mentioned above, Domazakis relates to a completely different category of meat-based products, namely emulsion-type meat based products produced by finely chopping or finely comminuting meat, which has nothing in common with the fermented dry and/or semi-dry sausages of the present invention. According to Domazakis, the olive oil containing emulsion-type meat based products described therein are prepared by initially mixing finely chopped meat with water, salt, polyphosphoric salts, preservatives, vegetable proteins, milk proteins and starch in an appropriate mixing apparatus, and subsequently mixing in olive oil, thereby preparing a finely comminuted meat emulsion with an end temperature of  $4^{\circ}\text{C}$ , which is filled in casings and subjected to a heat treatment at  $72^{\circ}\text{C}$ . Domazakis, however, neither teaches the average skilled person anything about the preparation of fermented sausages, nor about the way of incorporating



olive oil in a meat mass suited for the preparation of fermented sausages. Moreover, due to the fact that the chemical and physical characteristics of the fermented sausages are substantially different to these characteristics of cooked emulsion-type meat products, Domazakis rather would not have been considered by the average skilled person concerned with the use of olive oil in the preparation of fermented sausages, as Domazakis teaches directly away from doing so, and thus it is not relevant to the present case.


On the other hand, even if the average skilled person would have ignored the fact that Domazakis refers to a completely different category of meat-based products, and that it teaches to the contrary, would have combined certain features with Bloukas and Gryczka, such a person would not have arrived at the subject matter of the present claims, for none of the references give any hint to the average skilled person with regard to the optimum starting temperature of -4°C and the optimum temperature for olive oil addition (i.e., -2°C), which are essential prerequisite steps for the preparation of olive oil containing fermented sausages. Moreover, upon reading the Domazakis and Gryczka references, the average skilled person would rather add olive oil prior to the addition of sodium chloride, as taught by Bloukas, which is regarded as the closest prior art.

In summary, it must therefore be stated that there is no teaching in the prior art as a whole that would have prompted the average skilled person, facing the objective technical problem solved by the present invention for adding olive oil to fermented sausages, to modify or adapt the information provided in the closest prior art document Bloukas, to arrive at something falling within the scope of the claims of the present application.

For all these foregoing reasons, Applicant respectfully requests entry of the foregoing claims amendments, reconsideration of the present application in light thereof and in light of the

foregoing remarks, and an allowance of all claims 1-4, as amended, over all the prior art of record.

Respectfully submitted,

By:   
Clifford W. Browning  
Reg. No. 32,201  
Krieg DeVault LLP  
One Indiana Square, Suite 2800  
Indianapolis, IN 46204  
(317) 238-6203